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REPORT
99-428

GENERAL AVIATION ACCIDENT LIABILITY STANDARDS ACT OF 1986

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Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2794]

The Committee on Commerce, Science, and Transportation, having considered an original bill (S. 2794) to regulate interstate commerce by providing for uniform standards of liability for harm arising out of general aviation accidents, reports favorably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to establish uniform Federal product liability standards for harm caused to occupants of a general aviation aircraft arising out of a general aviation accident. "General aviation" refers to smaller aircraft, generally having fewer than 20 seats, which are not used in scheduled service or military operations. Product liability actions arising out of a general aviation accident could be brought in either State or Federal court and would be subject to the liability standards established by the bill.

BACKGROUND AND NEEDS

The bill, as reported, would protect the traditional primary interest of the Federal Government in the promotion of safe and efficient air commerce and the development of aviation technology. The current reliance on State-by-State accident liability standards and the lack of a clear, uniform standard of responsibility has im-

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posed a significant burden on the general aviation industry and threatened Federal aviation policy goals. Industry trends indicate that the timely enactment of Federal legislation in this area is of utmost importance.

The Federal Government has preempted the individual States in the regulation of design, manufacturing, and performance standards for individual aircraft, in the certification and licensing of pilots and mechanics, in the control of air traffic in the Nation's skies, and in the investigation of aircraft accidents. However, the review of those standards which determine tort liability has remained within the jurisdiction of the several States. The increasing burden of complying with the varying State liability standards has seriously threatened the viability of the general aviation industry. More importantly, the impact of varying State liability standards threatens specific goals Congress has enumerated in the Federal Aviation Act of 1958 and elsewhere, goals which include promoting the development of air commerce, fulfilling the requirements of national defense, and research into and development of aviation technology.

The Committee believes that these goals are furthered by a healthy general aviation industry. Today that industry represents a significant and sizeable sector of U.S. aviation. Over 200,000 general aviation aircraft in service today utilize over 16,000 U.S. airports, located througout the country, including Hawaii and Alaska. General aviation aircraft fly more than four times as many hours as scheduled airlines and carry over 100 million travelers each year.

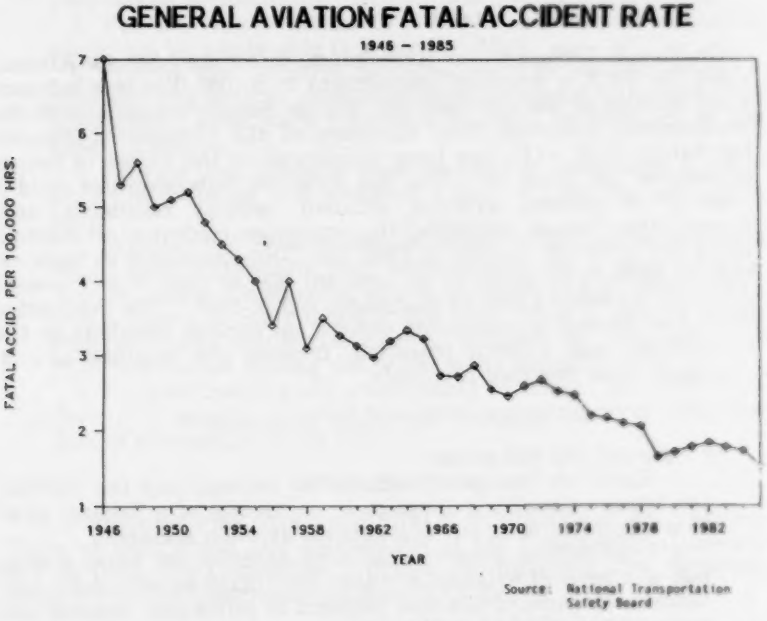
However, the Committee has noted several disturbing developments which call into question our ability to continue that progress, maintain U.S. preeminence in the field of general aviation, and promote Congress' aviation policy goals. The production of general aviation aircraft has declined precipitously since the mid-to-late 1970s. From peak sales of nearly 18,000 units in 1978, the industry has declined to 2,029 deliveries in 1985. 1986 sales are not expected to exceed 1,200. No U.S. manufacturer is currently producing a general aviation trainer. Over 50 percent of the skilled people who made up the U.S. general aviation work force in 1978 are no longer working in the industry. The number of applications for student pilot certificates and the number of private pilot certificates issued are declining. In 1985, the Nation's active pilot supply shrank by nearly 13,000 pilots, and the country may face a major training challenge in the future.

These indicators demonstrate that the economic and technological viability of the general aviation industry in the United States has declined dramatically during the past decade. A major contributing factor in this decline is the explosion of product liability costs.

Testimony before the Committee indicated the extent to which the liability burden was undermining the viability of the general aviation industry. Cessna Aircraft Company, the largest U.S. manufacturer of general aviation aircraft, had less than 50 claims outstanding in 1970. By 1986, that figure has climbed to over 600. The total amount of claims outstanding against Beech Aircraft Corporation, another large U.S. manufacturer, rose from $414 million in

1984 to $1.1 billion in 1986—a 265 percent increase in two years. For the industry as a whole, the total cost of product liability, including direct insurance costs, self-insurance, defense costs, settlements, and judgments, jumped from $27 million in 1977 to $210 million in 1985 (the latest figures available). Most importantly, recent trends show a worsening problem, as costs tripled between 1983 and 1985.

These exploding liability costs have occurred during a period when the overall safety of the general aviation industry has unquestionably improved. General aviation's safety improvements are even more meaningful because more aircraft are flying more hours than before. Nearly 220,000 general aviation aircraft are in active use in the United States today, about twice the number as in the 1960s. Although flying hours are increasing (from around 28.8 million in 1975 to 36.8 million in 1986), the fatal accident rate is at its lowest point in history, as shown on the following chart.



Evidence of the need for a legislative solution to the product liability problem was presented in testimony from both manufacturers and those who own and fly general aviation aircraft. Among those expressing concern were the Aircraft Owners and Pilots Association, the National Aeronautic Association, the Experimental Aircraft Association, the National Air Transportation Association, the General Aviation Manufacturers Association, and the National Business Aircraft Association. Aviation manufacturers, consumers, and service and repair centers all expressed concern about the

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impact of product liability costs on the industry in general, spare parts availability and affordability, and new aircraft development.

The bill reported by the Committee is a response to this situation. It extends the comprehensive Federal regulation of all other aspects of the aviation industry to the resolution of products liability issues. The Committee did not believe specific settlement mechanisms, caps on the dollar amount of recoveries, or limits on attorney's fees were necessary to further Federal interests.

The bill would bring uniformity, clarity, and a greater degree of certainty to the general aviation product liability arena. These benefits will promote strong historical Federal interests by establishing a favorable environment for a viable domestic general aviation industry. Such stability should maintain U.S. preeminence in the aviation field, encourage continued development of safe aircraft, foster research and development into new technology, and ensure that those harmed in a general aviation accident are not denied compensation because no industry exists to be held accountable.

LEGISLATIVE HISTORY

On May 6, 1986, Senator Kassebaum, introduced Senate Amendment No. 1823, a proposed amendment to S. 100 that was substantially similar to the reported bill. Eleven Senators cosponsored the amendment, including four members of the Committee. Similar legislation (H.R. 4142) has been introduced in the House of Representatives: On June 18, 1986, the Aviation Subcommittee held a hearing on general aviation accident liability standards, and, among other things, examined the provisions contained in Amendment No. 1823. On August 7, 1986, the Committee met in open executive session to consider an original bill entitled the "General Aviation Accident Liability Standards Act of 1986." The Committee agreed to several amendments offered by various members of the Committee, and without objection, ordered the original bill, as amended, to be reported favorably.

SUMMARY OF MAJOR PROVISIONS

As reported, the bill would:

1. Establish Federal standards for determining the liability for harm or property damage to occupants of a general aviation aircraft arising out of a general aviation accident;

2. Provide that a person claiming damages for harm arising out of a general aviation accident may bring an action for negligence. Manufacturers and builders of airframes, engines and components could be held liable:

   a. for equipment which is unreasonably dangerous for its intended purpose according to reasonably feasible engineering and manufacturing practices, at the time the product left the control of the manufactuerer, and was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured;

   b. for failure to warn of dangers of which the manufacturer knew or should have known; and

   c. for breach of warranty.

A manufacturer would not be liable if it could establish that a defective condition could have been corrected by compliance with action prescribed in a service bulletin or Federal Aviation Administration (FAA) Airworthiness Directive. Evidence of FAA standards would be admissible;

3. Provide that airframe and component or subassembly manufacturers would be jointly and severally liable with each other for product defects; other parties would be severally liable. Liability would be based on comparative responsibility, *i.e.*, where more than one person caused the accident, damages would be allocated on a percentage basis among all those found responsible for the accident;

4. Provide that the liability of manufacturers and suppliers would be limited to a period of 20 years from the date delivery, unless the manufacturer had given an express warranty that the product would be suitable for its intended purpose for a longer period of time. For replacement components, the 20-year repose period would run from the date of replacement;

5. Provide that evidence of subsequent remedial measures would not be admissable to prove liability;

6. Provide that punitive damages would be awarded where a claimant was able to show that there is reason to believe that a defendant acted with conscious, flagrant indifference to the safety of others;

7. Provide that lawsuits must be filed no later than 2 years after the date of the accident which caused the plaintiff's harm;

8. Provide that Federal district courts as well as State courts would have jurisdiction over cases arising out of general aviation accidents. Defendants would be permitted to remove any case brought in State court to the local Federal district court. Federal courts would also have jurisdiction to determine any State law claims arising out of the same accident; and

9. Provide that the bill would apply to actions for harm arising out of general aviation accidents occurring on or after the date of enactment of the bill.

ESTIMATED COSTS

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 14, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the General Aviation Accident Liability Standards Act of 1986, as ordered reported by the Senate Committee on Commerce, Science and Transportation, August 7, 1986. CBO expects enact-

ment of this bill to result in no significant costs to the federal government or to state or local governments.

This bill would establish federal standards for determining liability for injuries or property damage arising out of general aviation accidents. Specifically, the bill would establish standards applicable to the liability of general aviation manufacturers as well as defenses available to them.

Both state and federal courts would have jurisdiction over general aviation accident liability cases under this act, but actions brought in state courts could be removed to a federal district court by any defendant without the consent of other parties. The bill would preempt state law to the extent that it establishes a rule of law or procedure applicable to a claim, but would not affect sovereign immunity defenses or workers' compensation law.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

The bill would establish uniform Federal liability standards for harm arising out of a general aviation accident. The Committee does not expect it to require any additional regulation, and therefore does not expect it to subject individuals or businesses to any additional regulation or paperwork. Further, the bill would have no impact on the privacy of any individuals.

SECTION-BY-SECTION ANALYSIS

Section 1.—Short title

This section contains the short title of the legislation, the "General Aviation Accident Liability Standards Act of 1986."

Section 2.—Findings and purpose

Subsection (a) sets forth Congressional findings which show a necessity for the legislation.

Since it was determined that there was the necessity for legislation, subsection (b) sets forth the purpose of the bill, "to establish standards for determining liability for harm arising out of general aviation accidents."

Section 3.—Definitions

This section contains definitions of 8 terms used in the bill. One of the most important of these is paragraph (4), "general aviation aircraft," which includes all aircraft which have been issued a type certificate or an airworthiness certificate and have a maximum seating capacity of fewer than 20 passengers and are not, at the time of the accident, engaged in scheduled passenger carrying operations.

Paragraph (6) contains a definition for the term "harm," which is defined to include property damage, bodily injury, death resulting from bodily injury, pain and suffering caused by such bodily injury, and emotional harm caused by such bodily injury.

Section 4.—Preemption; applicability

Section 4(a) provides that this bill supersedes any State law regarding recovery, under any legal theory, for harm arising out of a general aviation accident, to the extent that this bill establishes a rule of law or procedure applicable to the claim. It is intended that where this bill establishes a rule of liability, the provisions of this bill, and judicial decisions interpreting and applying this bill, will supersede State law. With respect to matters not addressed by this bill, courts may make reference to applicable State law.

It is the general intent of this bill to establish rules of Federal law to determine the liability of persons responsible for harm arising out of general aviation accidents. Congress has previously, through Federal law, established rules of liability for certain types of injuries in areas of specific Federal concern. *See, e.g.*, Federal Employers' Liability Act, 45 U.S.C. 51–59 (liability for injuries for railroad employees); the Jones Act, 46 U.S.C. 688 (liability for injuries to merchant seaman).

Section 4(b) provides that this bill shall not be construed to supersede or waive or affect any defense of sovereign immunity asserted by the United States or any State.

Section 4(c) provides that this bill shall not be construed to affect the liability of a manufacturer, owner, or operator of any aircraft that is not a general aviation aircraft, or a person who repairs, maintains or provides any other support for any aircraft that is not a general aviation aircraft, for damages for harm arising out of the operation of an aircraft that is not a general aviation aircraft. This provision is intended to assure that this bill will not be construed to limit or affect the liability of manufacturers of large commercial jets or the owners or operators of aircraft used in scheduled airline operations.

Section 4(d) provides that no right of action for harm exists under this bill if that right would be inconsistent with the provisions of any applicable workers' compensation law. The intent of this provision is to maintain the employer's immunity from tort liability for injuries to its employees to the extent provided under applicable State workers' compensation law.

Section 4(e) provides that, in addition to any manufacturer, owner, or operator of any general aviation aircraft, and any person who repairs, maintains, or provides any other support for such an aircraft, the bill applies to occupants of general aviation aircraft who are harmed in a general aircraft accident and to persons on whose behalf such an action for such harm is brought. The bill also applies to an action brought by a non-occupant if such action is based on harm to an ooccupant. For example, the surviving spouse of an occupant killed in a general aviation accident may bring an action for bereavement or loss of consortium. That action would be subject to the provisions of the bill since it arises out of harm to an occupant of a general aviation aircraft.

The bill does not apply to actions brought by or on behalf of non-occupants who are injured by a general aviation aircraft. The Committee determined that injuries to persons on the ground, *e.g.* motorists, school children on a playground, etc., who were outside the scope of this bill. In addition, the bill would not apply to occupants of non-general aviation aircraft.

Section 5.—Uniform standards of liability for general aviation accidents

Section 5 provides that liability for harm arising out of a general aviation accident may be established on the basis of negligence or strict liability. Subsection (a) provides that any person claiming damages for harm (as defined in section 3(6)) arising out of a general aviation accident (as defined in section 3(3)) may bring an action against a party and may recover damages from such party, if such party was negligent and such negligence is a proximate cause of the claimant's harm. The terms negligent and negligence are not defined in the bill, but are intended to be consistent with the definitions contained in the Restatement (second) of Torts. In order to recover under subsection (a), the claimant must prove both that the defendant breached the duty of reasonable care and that such breach was a proximate cause of the claimant's harm.

Subsection (b)(1) sets forth an alternative basis for establishing liability against a general aviation manufacturer for defects in design or construction. In order to establish liability against a general aviation manufacturer for harm arising out of a general aviation accident, the claimant must establish that, (1) the product, when it left the control of the manufacturer, was in a defective condition unreasonably dangerous for its intended purpose, according to engineering and manufacturing practices which were reasonably feasible at the time the product left the control of the manufacturer, (2) the defective condition is a proximate cause of the claimant's harm, and (3) the general aviation aircraft was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured. The bill does not define the term "defective condition unreasonably dangerous," but it is intended to incorporate the standard of strict liability for products, adopted in the Restatement (Second) of Torts,[1] which holds a manufacturer liable for a product that is in a "defective condition unreasonably dangerous." Although States have applied a variety of tests for determining whether a product is in a "defective condition unreasonably dangerous," a commonly-applied test applied by courts is the risk-utility balancing test. This test measures a product's safety by evaluating whether the product's utility outweighs its risks.

Determining whether a product is in a "defective condition unreasonably dangerous" should involve the application of knowledge or engineering and manufacturing practices which were reasonably feasible at the time the product left the manufacturer's control. This section precludes the so-called "hindsight test" of liability which uses the most current knowledge about a product's dangers

[1] Restatement (Second) Torts section 402A (1965).

and risks to determine whether the product was defective at the time it was made. Only a small minority of States have held that a manufacturer may be strictly liable regardless of the scientific capabilities of reducing a risk at the time of manufacture. In general aviation aircraft cases alleging strict liability for either manufacturing or design defects, the Committee determined that the analysis should focus on technology feasible at the time the aircraft left the control of the manufacturer.[2]

A claimant must prove, as part of a *prima facie* case under subsection (b)(1), that the general aviation aircraft was being used at the time of the accident for a purpose and in a manner for which it was designed and manufactured. An accident resulting from operation beyond safe legal operating limits would be an example of using an aircraft for a purpose and in a manner for which it was neither designed nor manufactured. This section is intended to encourage responsible behavior, and the safe, legal operation of aircraft.

Paragraph (2) of subsection (b) establishes a cause of action against a general aviation manufacturer for failure to provide warnings or instructions. Paragraph (2) of subsection (b) subjects general aviation manufacturers to liability for failure to provide warnings if at the time the product left the manufacturer's control: (1) The manufacturer knew, or in the exercise of reasonable care should have known, about a danger connected with the product that caused the claimant's harm, and (2) the manufacturer failed to provide the warnings or instructions that a person exercising reasonable care would have provided, unless those warnings or instructions if provided would not have materially affected the conduct of the product user, and (3) the failure to provide warnings or instructions is a proximate cause of the claimant's harm. A manufacturer also may be liable for a failure to provide warnings or instructions after the product left its control. A claimant must establish that after the product left the manufacturer's control, the manufacturer: (1) Knew, or in the exercise of reasonable care should have known, about the danger which caused the claimant's harm, (2) failed to take reasonable steps to provide warnings or instructions, after the manufacture of the product, which would have been provided by a manufacturer exercising reasonable care, unless such warnings or instructions, if provided, would not have materially affected the conduct of the product user, and (3) the failure to provide warnings or instructions is a proximate cause of the claimant's harm.

This standard of liability for failure to provide warnings at the time the product left the manufacturer's control and at a time after the product left the manufacturer's control generally follows

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[2] *See, e.g., Bruce* v. *Martin-Marietta Corp.*, 544 F.2d 442,447 (10th Cir. 1976) (evidence of the state-of-the-art at the time airplane was made is relevant to a strict liability claim); *McLaughlin* v. *Sikorsky Aircraft*, 148 Cal. App. 3d 203, 195 Cal. Rptr. 764 (1983) ("Among the relevant factors, and securely within the manufacturer's knowledge, are the feasibility and costs of an alternative design [citation omitted]. It seems apparent that evidence the design comports with the state of the art is relevant to a proper determination of such costs and feasibility factors.").

the majority case law. Most courts have in effect applied a negligence standard in failure to warn cases.[3]

Paragraph (3) of subsection (b) establishes a cause of action for breach of an express warranty. Under majority law, a manufacturer who makes an express warranty about a product is strictly liable for the harms caused as a result of the product's failure to conform with the warranty.[4] The Restatement (Second) of Torts states that a manufacturer whose product fails to conform to the manufacturer's own express warranty about a material fact concerning the character or quality of the product is subject to liability for harms caused by justifiable reliance upon the express warranty. This liability arises even though the warranty is not made fraudulently or negligently, and even though there is no contractual relationship with the manufacturer.[5]

Paragraph (3) of subsection (b) provides that a manufacturer may be liable if, (1) the manufacturer made an express warranty with respect to the product, (2) such warranty relates to that aspect of the product which caused the harm, (3) the product failed to conform to the warranty, and (4) the failure of the product to conform to such warranty is a proximate cause of the claimant's harm. The focus is on whether the condition of the product was such that it did not meet the manufacturer's express representations about the product. Subsection (c) establishes a defense to an action for a design or manufacturing defect, or for a failure to provide warnings or instructions. Paragraph (1) of subsection (c) provides that a general aviation manufacturer will not be liable if such manufacturer proves, by a preponderance of the evidence, that (1) the defective condition could have been corrected by compliance with actions described in an airworthiness directive issued by the FAA or a service bulletin issued by the manufacturer of the product, and (2) such directive or service bulletin was issued a reasonable time before the date of the accident and after the product left the control of the manufacturer. FAA issues airworthiness directives [6] and manufacturers issue FAA-approved service bulletins to notify aircraft owners, operators and other interested persons of an unsafe condition, in order to ensure the airworthiness and operational safety of the aircraft. It is the owner or operator of the aircraft, not the manufacturer, who has the legal responsibility under the Federal Aviation Act 1958 for ensuring compliance with airworthiness directives.[7] In the instance in which an airworthiness directive or service bulletin was issued after the product left the manufacturer's control and at a point in time before the date of the accident which would have provided a reasonable time for the defective condition to have been corrected, the general aviation manufacturer has fulfilled its responsibility to ensure that the defective condition is corrected.

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[3] *See, e.g., Hoffman* v. *Sterling Drug, Inc.*, 485 F.2d 132 (3d Cir. 1973); *Borel* v. *Fibreboard Paper Products*, 493 F.2d 1076 (5th Cir. 1973); *White* v. *Dealers Transit, Inc.*, 446 N.E. 2d 460 (Ohio Ct. App. 1980).

[4] *See* W. Prosser, "Handbook of the Law of Torts" 652 (4th ed. 1971) ("decisions to the contrary have been amazingly few").

[5] *See* Restatement (Second) of Torts section 402B (1975).

[6] Airworthiness directives are enacted under the statutory authority of 49 U.S.C. section 1421 (1976). *See* 14 C.F.R. section 39.13 (1985).

[7] 14 C.F.R. sections 91.163(a), 91.173(a)(2)(v) (1985).

Paragraph (2) of subsection (c) provides that evidence of compliance with standards, conditions, or specifications established, adopted or approved by FAA is admissible with regard to whether the product was defective and unreasonably dangerous for its intended purposes under subsection (b). This provision follows general law. Compliance with Government standards is well recognized as a factor that the jury can consider in determining whether a design was defective.[8] Courts have treated the fact of compliance with FAA safety standards as appropriate for consideration by the trier of fact in product liability cases involving aircraft.[9]

The Committee deleted a provision of the bill as introduced (section 205(d) of Amendment No. 1823) that prohibited *de novo* review by a jury of FAA findings on type certification of a model of an aircraft. Deletion of this provision is not intended, however, to adopt the rule of any one State. Rather, the Committee intends to allow the courts to determine on a case-by-case basis when and to what extent FAA certifications are subject to reassessment.

Section 6.—Comparative responsibility

Section 6(a) establishes the rule of comparative responsibility. Under this rule, the claimant's own negligence does not preclude recovery, but merely reduces the damages proportionately. The claimant recovers from each defendant the amount of damages for which the defendant is responsible.

Under early common law, if a claimant's own conduct contributed at all to the harm, recovery was barred. This contributory negligence defense led to harsh results for injured persons. The rule was due to the reluctance of common law courts to apportion fault. Today, courts do apportion fault. Most of the States have adopted comparative negligences rules.[10] Some States have adopted the "pure" comparative negligence rule which allows a claimant to recover damages from a defendant even if the claimant is more responsible for the harm. Other States have adopted "modified" comparative negligence rules which allow the defendant to recover damages from the defendant unless the claimant's fault is greater than the defendant's fault or greater than the aggregate fault of all defendants. Section 6(a) adopts the "pure" comparative negligence rule for general aviation accidents.

Under the bill, the trier of fact will determine the percentages of responsibility for the claimant's harm attributable to the claimant, each defendant, each third-party defendant, and any other person not a party to the action. Then, the claimant's damages shall be reduced by an amount in proportion to the claimant's percentage of responsibility. For example, if the trier of fact determines that defendant A is 40 percent responsible for the harm, defendant B is

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[8] *See, e.g., Jackson* v. *Spagnola*, 349 Pa. Super. 471, 503 A.2d 944 (1986) (trial court did not err in admitting evidence of compliance with the Federal Motor Vehicle Safety Standards in a strict liability case); *Rucker* v. *Norfolk and Western Railway Co.*, 77 Ill.2d 434, 396 N.E. 2d 534 (1979) (evidence of product's compliance with governmental safety standards is relevant and admissible in a product liability case on the issue of whether the product is defective and unreasonably dangerous).

[9] *See, e.g., Bruce* v. *Martin-Marietta*, 544 F.2d 442 (10th Cir. 1976); *Wilson* v. *Piper Aircraft Corp.*, 282 Or. 61, 577 P.2d 1322, *rhg. denied*, 282 Or. 579 P.2d (1978).

[10] *See* V. Schwartz, *Comparative Negligence*, App.A (2d ed. 1986)

40 percent responsible, and the claimant is 20 percent responsible, the claimant's damages will be reduced by 20 percent.

Section 6(b) provides that, except as provided in subsection (c), the liability of each defendant is several only, and not joint. Each defendant is liable only for the proportion of damages allocated to it in accordance with its proportionate share of responsibility, as determined under subsection (a).

Joint and several liability was developed at common law because courts were reluctant to apportion fault (a claimant's contributory negligence was a complete bar to recovery) and did not permit defendants to seek contribution from other tortfeasors who were responsible for a harm.[11] In addition, two or more defendants could be joined in a tort action only when they had conspired to harm a claimant (i.e., acted in concert). Later, procedural rules were modified to permit joinder of all persons whose wrongful conduct may have contributed to a harm. With this development, courts adopted the doctrine of joint responsibility holding each defendant responsible for the entire harm. Courts would apportion damages only if the claimant's injuries were separate and distinct. If the conduct of two or more defendants combined to cause an indivisible injury, however, each defendant was jointly liable for the entire damages.

In contrast, the Committee believes that legal rules which fail to hold a person proportionately responsible for damages caused by unsafe actions undermine the specific Federal policy promoting the exercise of safety by all persons involved in general aviation. A rule permitting the imposition of the claimant's entire damages on a defendant whose conduct may have been a minor factor in causing the harm lessens the incentives necessary for a safe general aviation system. Moreover, joint and several liability encourages actions against a defendant who has substantial assets, no matter how minor that defendant's contribution to the accident. Sound aviation policy should allocate damages proportionate to each party's responsibility for an accident.

Section 6(b) abolishes joint liability and holds each defendant severally liable for the portion of damages based on its proportionate share of responsibility for the harm. Subsection (c), however, sets forth two exceptions to this rule. A general aviation manufacturer may be jointly liable for: (1) Harm caused by a defective system, component, subassembly, or other part of the aircraft, if the general aviation manufacturer installed or certified such product as part of the original type design for the aircraft, or (2) harm caused by a defective subassembly or other part of a system or component, if the general aviation manufacturer made the system or component.

The imposition of joint liability in these two instances is justified because the general aviation manufacturer should be responsible for the defect in its product which caused the claimant's harm. In the first instance, it is appropriate to make the general aviation manufacturer responsible for any defects in the parts and systems of the entire assembled aircraft because the manufacturer exercises control over the selection of manufacturers of systems, components, subassemblies, and other parts. In the second instance, if the

[11] F. Harper & F. James, *The Law of Torts*, section 10.2 (1956).

general aviation manufacturer made the system or component, the manufacturer was in a position to select the subassembly or other part and, therefore, should be responsible for harm caused by that defective subassembly or other part.

Aside from these two instances, a general aviation manufacturer should not be jointly liable for the damages, but liable only for its proportionate share of the damages. The section thereby relieves the aviation manufacturer from responsibility for damages caused by the independent conduct of a third party over whom the manufacturer has no control. For example, a general aviation manufacturer would not be responsible for damages caused by an owner, a pilot, or a repair station whose act or omission caused the claimant's harm.

Section 7.—Time limitation on liability

Section 7 establishes a time limitation after which a general aviation manufacturer no longer has a legal obligation for harm which is alleged to have been caused by an aircraft or a system, component, subassembly, or other part of an aircraft. The 20-year time limitation on liability is fair to claimants. This 20-year time limitation does not begin to run until the date of delivery of the aircraft to its first purchaser or lessee if delivered directly from the manufacturer, or from the date of first delivery of the aircraft to a person engaged in the business of selling or leasing such aircraft. In a case alleging harm caused by a system, component, subassembly, or other part which replaced another product in, or which was added to, the aircraft, the 20-year time limitation does not begin to run until the date of the replacement or addition.

The rationale for this time limitation is that general aviation manufacturers should not be exposed to liability for harm caused by their products for an unlimited period of time. Accidents involving general aviation aircraft which have been on the market and in use for 25 or 30 years or even more are not likely to be due to any defect in the design or manufacture of the product because the product has operated safely for a very long period of time. These accidents are more likely to be due to improper maintenance or repair of the product.

Of those States which have enacted time limitation statutes, most are considerably shorter than 20 years, ranging from 6 years to 12 years.[12] Section 7 establishes a 20-year limitation period to assure that claimants are not unfairly barred from suing for harm arising out of a general aviation accident.

Under subsection (b), the time limitations set forth in subsection (a) do not apply if the general aviation manufacturer of the product that caused the claimant's harm gave an express warranty that the product would be suitable, for the purpose for which it was intended, for a longer period of time. In such instances, the general aviation manufacturer will be subject to liability for the period of time for which the product was warranted.

Subsection (c) provides that the time limitations in section 7 do not apply to a person's duty, after the sale or lease of an aircraft,

[12] *See, e.g.*, SDCL section 15-2-12.1 (1978) (6 years); Tenn. Code Ann. section 29-28-103 (as amended 1979).

to provide additional or modified warnings or instructions regarding the use or maintenance of such aircraft or any systems, components, or other part of such aircraft. Thus, section 7 is more favorable to claimants than the statute of repose provisions of some State laws that apply time limitations to warning claims.[13]

Section 8.—Subsequent remedial measures

Section 8 follows the Federal rule that evidence of a repair or improvement in the safety of a product after the time when the harm occurred is not admissible against the manufacturer to prove liability. The policy basis for this rule is that evidence of changes in a product is not relevant to the determination of whether the product was defective and unreasonably dangerous at the time when it was made. In addition, permitting such evidence to be introduced in a lawsuit may deter manufacturers from making improvements to the safety of their products because of the fear that such evidence could be used against them in cases involving older products. Section 8 is intended to encourage general aviation manufacturers to improve the safety of their products without the fear that such evidence could be used against them in cases involving older products.

Section 8 incorporates rule 407 of the Federal Rules of Evidence, which states that evidence of remedial measures taken after an event occurs is not admissible to prove negligent or culpable conduct in connection with that event.[14] The majority of Federal courts apply the rule 407 exclusion of remedial measures in all product liability actions regardless of whether the underlying theory of liability is negligence or strict liability. Evidence of subsequent remedial measures is admissible to the extent permitted under rule 407 of the Federal Rules of Evidence, which provides that evidence of subsequent remedial measures is admissible to prove ownership, control, or feasibility of precautionary measures, if controverted, or impeachment.

Section 9.—Admissibility of certain evidence

Section 9 provides that evidence of Federal, State or local income tax liability or any social security or other payroll tax liability attributable to past or future earnings, support or profit alleged to have been lost or diminished because of harm arising out of a general aviation accident is admissible regarding proof of a claimant's damages. This provision allows the trier of fact to be informed about the tax consequences of damages awarded to the claimant. The U.S. Supreme Court has recognized the admissibility of this evidence in claims arising out of injuries to railroad workers. *Norfolk & Western Ry.* v. *Liepelt*, 444 U.S. 490 (1980). Section 9 also provides that the amount of damages recoverable in a lump-sum for losses attributable to future earnings, support or profits is the present value of such losses.

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[13] *See, e.g., Erickson Air-Crane Co.* v. *United Technologies Corp.*, P.2d (Or. 1986); *Dague* v. *Piper Aircraft Corp.*, 275 Ind. 520, 418 N.E.2d 207 (1981)

[14] Fed. R. Evid. 407.

Section 10.—Punitive damages

Section 10(a) provides the legal standards for the recovery of punitive damages. Under this section, punitive damages may be awarded in an action only if the claimant establishes by clear and convincing evidence that the harm suffered was the direct result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by use of the general aviation aircraft involved. Punitive damages serve the function of punishing the defendant for outrageous conduct and deterring such conduct in the future by the defendant and by others.[15] Punitive damages are quasi-criminal in nature in that they are not awarded to compensate a claimant for actual damages but are awarded to punish the defendant for culpable conduct. Thus, the standard of proof used in section 10 is higher than the "reponderance of the evidence" standard generally applied in tort actions. The burden of proof is raised to "clear and convincing evidence." This standard of proof is lower than the criminal law standard for imposing punishment, which is proof beyond a reasonable doubt.

In order to establish liability for punitive damages, the claimant must prove that the defendant's conduct manifested a "conscious, flagrant indifference to the safety of persons who might be harmed by use of the general aviation aircraft involved." A mere failure to exercise reasonable care does not amount to the requisite conduct for awarding punitive damages.

Because of the prejudicial effect on the award for compensatory damages, subsection (b) provides that evidence regarding the financial worth of a defendant, its profits, or any other evidence relating solely to a claim for punitive damages is not admissible unless the claimant establishes, before any such evidence is offered, that the claimant can present evidence that will establish *prima facia* proof that evidence exists which would justify the award of punitive damages.

Subsection (c) relates to wrongful death actions where applicable state law provides, or has been construed to provide, that only damages termed "punitive" are recoverable.[16] In those unique situations, punitive damages are a substitute for compensatory awards. Subsection (c) provides that a defendant may be liable for any such damages pursuant to the provisions of this bill, regardless of whether a claim is asserted under section 10.

Section 11.—Time limitation on bringing actions

Section 11 preempts State statutes of limitations with respect to actions governed by this bill. A statute of limitations establishes the time within which an action must be brought. If an action is not brought within the specified time period, the action is barred. Statutes of limitation encourage the prompt filing and resolution of claims. The policy justification is that the longer a claimant waits to file his or her action, the greater the likelihood that the evidence will have become "stale" and recollection of facts will have diminished.

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[15] *See* Restatement (Second) of Torts section 908(1) (1965).
[16] *See* Ala. Code section 6-5-410.

Paragraph (1) of subsection (a) provides that the claimant must file a complaint within 2 years after the date on which the accidents occurred which caused the claimant's harm. This 2-year period provides ample time for the claimant to make preliminary assessment of his or her case and to determine whether to file an action. This rule triggering the limitations period at the time at which the accident occurred is reasonable because general aviation accidents, unlike injuries involving latent harm, involve traumatic injuries. When a general aviation accident occurs, the claimant immediately is aware of the injury, and the "time of discovery" rule which sometimes is applied in product liability actions is not necessary for actions arising out of general aviation accidents.

Paragraph (2) provides that the summons and complaint must be served upon the defendant within 120 days after the filing of the complaint, unless the claimant can show good cause why such service was not made within such 120-day period. The purpose of this provision is to ensure that the defendant receives timely notice of the complaint. It will help assure that the defendant has a reasonable opportunity to investigate the facts and have an adequate basis to respond to the complaint.

Paragraph (2) will not apply to service of process in a foreign country pursuant to rule 4(i) of the Federal Rules of Civil Procedures or any similar State law.

Section 12.—Sanctions

Section 12 provides that, with respect to any action governed by this bill, the sanctions for violation of rule 11 of the Federal Rules of Civil Procedure shall apply and shall be strictly enforced by the court.[17]

Rule 11 requires an attorney to sign every pleading, motion, and other paper submitted to the court. A party who is not represented by an attorney shall sign his or her own pleading, motion, or other paper. In both cases, the party attests that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, or to cause unnecessary delay or needless increase in the cost of litigation. If a document is signed in violation of this rule, the court shall impose upon the person who signed it an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Section 12 states that sanctions for violation of rule 11 should be strictly enforced by the court in an action governed by this bill. If a party to an action governed by this bill, or the party's attorney, has violated rule 11, the court should impose appropriate sanctions, including orders to pay to the other party or parties the amount of the reasonable expenses, including a reasonable attorney's fee, incurred as a result of the violation.

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[17] Fed. R. Civ. Pro. 11 (1983).

Section 13.—Jurisdiction

Section 13(a) provides that an action to recover for harm arising out of a general aviation accident may be brought in a Federal district court, and that such courts shall have original jurisdiction without regard to the amount in controversy in all civil actions for harm arising out of a general aviation accident and in all actions for indemnity or contribution described in section 6(d) of this bill. Claims arising under this bill arise under Federal law and are Federal question cases. Federal court jurisdiction will assure a uniform interpretation and application of the bill.

Subsection (b) provides that any defendant in an action for harm arising out of a general aviation accident brought in State court may remove such an action to the Federal district court embracing the place where the action is pending, without the consent of any other party and without regard to the amount in controversy.

Subsection (c) provides that in any case commenced in or removed to a district court of the United States under section 13, the court shall have jurisdiction to determine all claims arising under State law that arise out of the same general aviation accident if a substantial question of fact is common to the claims under State law and to the Federal claim, defense, or counterclaim. Providing jurisdiction over all claims arising out of the same accident will assist in achieving efficient use of judicial resources.

Subsection (d) sets forth the rules for venue for general aviation accident cases brought in Federal district courts. A general aviation accident claim may be brought only in a district in which (1) the accident giving rise to the claim occurred, or (2) any plaintiff or defendant resides. Many accident actions are brought in the district in which an accident has occurred and in many cases that will be the appropriate place to maintain such an action. However, other venue choices, i.e., a district in which any plaintiff or defendant resides, are available. Subsection (d) also provides that a general aviation action pending in a district court may be transferred on the motion of any party or on the court's own motion to any other district for the convenience of parties and witnesses in the interest of justice. This will assure flexibility in the transfer of general aviation accident actions to an appropriate district.

Section 14.—Severability

Section 14 provides that if any provision of this bill or the amendments made by this bill, or the application of the bill to any person or circumstances, is held invalid, the remainder of this bill and such amendments and the application of the provision to any other person or circumstances shall not be affected by that invalidation.

Section 15.—Effective date

This section provides that the bill applies to any civil action for harm arising out of a general aviation accident which is filed on or after the date of enactment of this bill, including actions for harm arising out of any accident which occurred before the date of enactment.

Section 15(b) provides that if an action governed by this act is filed within 180 days after the date of enactment, liberal leave is to be given to a party to amend any pleading, motion, statement of jurisdiction or venue or other matter to conform to the provisions of this bill. This provision is intended to assure that parties will be given the opportunity to amend complaints, motions, etc., to conform to the substantive provisions of law established under this bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.

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